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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 21st May 2025

S.R.O. No. 303/2025—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th April 2025 passed in the I.D. Case No. 45 of 2019 [under Section 2-A(2)] passed by the Presiding Officer, Industrial Tribunal, Bhubaneswar on the industrial dispute between the M/s Koustav Group of Institution(KGI) At Koustav Technical Campus, Infocity Road, Patia, P.S. Chandrasekharpur-751024. Bhubaneswar, 2. Mrs. Namita Mallick, (Executive Director), M/s Koustav Group of Institution(KGI) At Koustav Technical Campus, Infocity Road, Patia, P.S. Chandrasekharpur-751024, 3. The Chairman, AICTE, All India Council for Technical Education (A Statutory Body of the Govt. of India), Ministry of Human Resource Development, Government of India, T-Nelson Mondela Marg, Vasant Kunj, New Delhi- 110070, 4. Subash Jena Managing Director) Bluestar Security and Detective Services, BIG-142, Sailashree Vihar, Bhubaneswar, Khurdha, 5. Sadasiva Martha (Managing Director), Bhubaneswar Security force and Services, Plot No. GA-52, Gayatri Vihar, C.S. Pur, Bhubaneswar, Khurdha, 6. Sadasiva Dash (MD)/ Seshadev Swain, Manager (Sales), Saisakti Security Services, Arbodaya Nagar, Near Mangala Mandir, Puri-752002 and Shri Sanjay Kumar Panda, S/o Gangadhar Panda, At Lp-469, Prasantai Vihar, P.O. KITT, Patia, P.S. Infocity, Bhubaneswar-751024 is hereby published as in the schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 45 of 2019 [u/s 2-A (2)]

Dated the 19th April 2025

Present :

Shri Benudhar Patra, B.SC. LL.M.,
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

1. M/s Koustav Group of Institution(KGI),
At Koustav Technical Campus,
Infocity Road, Patia, P.S. Chandrasekharpur-751024,
Bhubaneswar.
- . . . First Party—Managements

2. Mrs Namita Mallick
(Executive Director),
M/s Koustav Group of Institution(KGI),
At Koustav Technical Campus,
Infocity Road, Patia, P.S. Chandrasekharapur-751024
3. The Chairman, AICTE,
All India Council for Technical Education
(A Statutory Body or the Govt. of India),
Ministry of Human Resource Development,
Government of India,
T-Nelson Mandela Marg, Vasant Kunj,
New Delhi- 110070.
4. Subash Jena (Managing Director),
Bluestar Security and Detective Services,
HIG-142, Sailashree Vihar, Bhubaneswar, Khurdha.
5. Sadasiva Martha (Managing Director),
Bhubaneswar Security Force and Services,
Plot No. GA-52, Gayatri Vihar, C.S. Pur,
Bhubaneswar, Khurdha.
6. Sadasiva Dash (MD)/ Seshadev Swain, Manager
Manager (Sales),
Saisakti Security Services,
Arbodaya Nagar, Near Mangala Mandir,
Puri-752002.

And

Shri Sanjay Kumar Panda, aged about 48 years . . . Second Party—Management
S/o Gangadhar Panda,
At Lp-469, Prasantai Vihar, P.O. KITT,
Patia, P.S. Infocity, Bhubaneswar-751024

Appearances :

| | |
|----------------------------------|-------------------------------------|
| Mrs. Basudev Barik, Advocate | . . . For the First Party Nos.1 & 2 |
| Shri Bikash Jena &C.R.Dash, Adv. | . . . For the First Party No. 3 |
| Shri Tapash Mishra, Adv. | . . . For the First Party No. 4 |
| Shri Sushant Dash, Adv. | . . . For the First Party No. 5 |
| None | . . . For the First Party No. 6 |
| Shri Asit Kumar Dash, Advocate | . . . For the Second Party—Workman. |

AWARD

The above named second party has approached this Tribunal by way of filing the present application under Section 2-A(2) of the Industrial Disputes Act, 1947(for short 'the Act') challenging his termination by way of refusal of employment w.e.f. the 1st May 2017 by the first party management No. 1 and claiming reinstatement in service with full back wages and consequential service benefits.

2. The case of the second party, as set out in his claim statement, in brief, is that he joined the organisation of the first party No.1 as a Security Supervisor on the 1st January 2000 and

discharged duties to the utmost satisfaction of his authorities for a continuous period of 17 years. It is stated that initially he was receiving a monthly salary of Rs.1800 which was increased from time to time and lastly he was being paid Rs.7500 per month. While continuing so, it is alleged, in the year 2005 the first party No.1 started engaging various contractors with a view to evade its statutory responsibilities under the Labour Laws and ultimately when the second party requested to bring him under the E.P.F. and E.S.I. Schemes, the management restrained him to enter into its premises and thereby refused him employment w.e.f. the 1st May 2017. According to the second party, such action of the first party No.1 amounts to retrenchment and due to non-compliance of the provisions of Section 25-F of the Act, the same is illegal. The second party also pleads that his termination is otherwise bad in law as because the same was effected in gross violation of the principles of natural justice, inasmuch as, he was never issued with any show cause by the management for any dereliction in duty, nor he was afforded with an opportunity by the management before doing away with his job. It is stated that soon after his termination the second party approached the management several times for his reinstatement but when the management paid a deaf ear to such request he approached the District Labour Officer, Khurda, Bhubaneswar by way of a written complaint on the 11th January 2018 but as his grievance could not be resolved by the labour machinery within the stipulated period of 45 days, resorting to the provisions of Section 2-A(2) of the Act he has laid the present application before this Tribunal praying to adjudicate his claim and to grant him the relief of reinstatement in job with full back wages and other consequential service benefits.

3. All the first party managements entered appearance in the case and filed their respective written statement.

First Party Nos.1 and 2 besides challenging the maintainability of the application has disputed almost all the averments of the claim statement and have stated in the written statement that the first party Nos.1 and 2 being not the pay master, nor the employer of the second party, they are in no way concerned with the engagement/non-engagement of the second party, who was a labour under outsourcing agencies/contractors. It has specifically been pleaded by the first party Nos.1 and 2 that the second party was engaged to work as a Security Guard by different outsourcing agencies, namely Blue Star Security and Detective Services (first party No. 4) since November 2015 to August 2017 at College of Engineering, Bhubaneswar and prior to that he was engaged through Bhubaneswar Security Force and Services (first party No. 5).

The first party No. 3 in its written statement has stated that the claim of the second party is not maintainable as against it as it is neither the employer of the second party nor it was made a party to the dispute initially raised before the labour machinery. The complaint of the second party being purely an internal affair of the first party Nos.1 and 2, it has got absolutely no role to play in the matter.

The first party No. 4 in its written statement narrating the engagement of the second party under it for the period from November 2015 till the 21st July 2017 has stated that on getting a contract from first party No.1 he had engaged the second party and on cessation of his engagement the second party had furnished an undertaking on the 21st July 2017 to the effect that he has received all his outstanding dues from the first party No. 4 and even thereafter he was paid Rs. 5000 on the 31st July 2017, Rs. 5,000 on the 4th August 2017, Rs. 8,000 on the 9th August 2017 and Rs. 8,000 on the 16th August 2017. It is stated that the first party No. 4 being no more a contractor of the first party No.1 and after termination of its contract another outsourcing Agency,

namely Saisakti Security Service (first party No. 6) having been assigned with the contract work of the first party No. 1, the second party has got no right to claim any relief from first party No.4.

The first party No. 5 (Sadasiva Martha) in its written statement has pleaded that he being not the proprietor of Bhubaneswar Security force and Services (first party No. 5), he has got no connection with either the first party Nos.1 and 2 or the second party and as such, has prayed for deletion of his name from the application as well as to reject the claim made against first party No. 5.

The first party No. 6 in its written statement has stated that it had obtained tender from Nabadigant Educational Trust on the 8th March 2017 and pursuant to the work orders received from the Trust, he had engaged the second party on the 12th March 2017. It is stated that the second party continued to work as a Security Guard under it for the months of March 2017 and April 2017 and upon cancellation of the tender by the Trust w.e.f. the 30th April 2017, he was paid all his dues for the months of March 2017 and April 2017.

5. Based on the pleadings, the following issues emerge for consideration :—

ISSUES

- (i) Whether the case is maintainable?
- (ii) Whether there exists employer-employee relationship between the first party managements and the second party workman?
- (iii) Whether the action of the managements in terminating the service of Shri Sanjay Kumar Panda, Ex-Security Supervisor with effect from the 1st May 2017 is legal and/or justified?
- (iv) If not, what relief the workman Shri Panda is entitled to?

6. To substantiate his stand while the second party examined himself as W.W.1 and relied on documents marked Exts.1 to 13, out of the first parties, the management Nos.1 & 2 and management No. 4 examined one witness each from their side and relied on documents which have been marked as Exts. A to K and Exts. L to N, respectively.

FINDINGS

7. *Issue No. (i)*—It is not out of place to mention that the All India Council for Technical Education (AICTE), a Statutory Body of Govt. of India, Ministry of Human Resource Development, New Delhi-110070, who has been arrayed as first party No. 3 in this proceeding, in its written statement has taken a stand that it has got absolutely no role to play in the engagement or non-engagement of the second party and therefore, the proceeding as against it is not maintainable. On a scrutiny of the record it is found that no where the second party in his complaint stated anything claiming relief from the first party No. 3. Even nothing reveals from Exts. 5 to 9 that the first party No. 3 in fact had any involvement with the grievance of the second party. On the other hand, it reveals that on a separate complaint being made by the second party to the first party No. 3 vide Ext. 10 regarding the affairs of the first party Nos.1 and 2, the first party No. 3 in turn requested the management vide its letter Ext. 11 to look into the grievance of the second party. On the face of the above, there is every reason to hold that the first party No. 3 has absolutely got no role to play on the grievance of the second party and accordingly, the proceeding is held not maintainable as against the first party No. 3.

8. However, maintainability of the instant application having been challenged by all the first party-managements, the same needs a thorough scrutiny. The second party, who claims to have

been terminated from service w.e.f. the 1st May 2017, initially raised his complaint on the 27th September 2017 before the Labour Commissioner, Odisha, Bhubaneswar vide Ext. 5 which was forwarded by the Asst. Labour Commissioner (Enf.) to the D.L.O., Khordha, Bhubaneswar vide Ext. 6 with a request to cause an enquiry into the complaint of the second party and to submit a detailed report thereon. It further reveals from the documentary evidence cited on behalf of the second party, i.e. Exts. 8 and 9 that the labour machinery acting upon the complaint of the second party had also issued notices to the first party management Nos. 2, 4, 5 and 6. According to the second party, when the labour machinery failed to resolve his grievance within the stipulated period of 45 days, he was constrained to approach this Tribunal resorting to the provisions of Section 2-A(2) of the Act. This part of the pleadings substantiated through the documentary evidence, as discussed above, are not controverted in any manner either by first party management Nos. 1 and 2 or management Nos. 4, 5 and 6 in any manner. The proceeding reveals that the instant application was filed before this Tribunal on the 13th December 2019, which is much after the stipulated date of raising of the complaint by the second party before the labour machinery and within the time frame prescribed by the Statute. There being no statutory infraction, the application preferred under Section 2- A(2) of the Act is held to be maintainable in this forum.

9. *Issue No. (ii)*—A thorough attention is required to determine the present issue, which is on the question of existence of employer-employee relationship between the first party managements and the second party. On the issue, the second party seems to have taken a prevaricating stand, inasmuch as, while in his pleadings he has claimed relief from the first party Nos.1 and 2 and for all purpose cites the said first parties as his employer, yet while adducing evidence he has admitted that during his employment he had served under different outsourcing agencies such as, first party Nos. 4, 5 and 6 and further he used to receive his monthly wages from the said outsourcing agencies. The second party in his pleadings as well as evidence has emphasised much that initially he was engaged directly by the first party Nos.1 and 2 and worked with the direct supervision of the authorities of the first party Nos.1 and 2 but he failed to substantiate that he was being paid his wages directly by the first party Nos. 1 and 2. Not a single wage slip or voucher is produced from which an inference can be drawn by this Tribunal that for his engagement he was being paid by the first party Nos.1 and 2. On the other hand, it has been elicited from the second party during his cross-examination that by virtue of Ext. A, his appointment under first party No. 4, he made a correspondence vide Ext. L on the 21st July 2017 (i.e. after the date of his alleged termination) that he has no outstanding dues as against the first party No. 4 and that he would not claim anything in future from the said management. Ext. B is yet another document which reflects that pursuant to the complaint of the second party the Conciliation Officer issued notice vide Ext. 9 calling upon the second party as well as the first party Nos. 2, 4, 5 and 6 to attend a joint enquiry on the 10th May 2018, on which date except the second party and the representative of the management No. 4 no other managements turned up. The proceeding of the said date marked Ext. 9 further goes to indicate that the management No. 4 when agreed to pay Rs. 5000 to the second party and declined to pay more on the ground that the second party had not performed over time duty during his service period, i.e. two years, the second party claimed Rs.1,00,000, as a result there could not be a settlement and he was advised by the A.L.O., Bhubaneswar to ventilate his grievance in the Labour Court by way of filing a T-3 application. The second party also admits in his cross-examination that prior to his termination he had received wages for two months from Sai Sakti Security Services (first party No. 6). Besides, Ext. 13 filed by the second party himself, discloses that on the 5th September 2005 the first party No. 5 had raised a bill towards pay and allowances of the security personnel for the month of August 2005. In the context, the second

party has tried to convince the Tribunal that the Authorities of first party Nos. 1 and 2 have signed on the same, but on a close scrutiny it is found that Ext. 13 on being presented by management No. 5 the same was endorsed for approval by the authorities of first party Nos. 1 and 2. Similarly, Ext. 3, the salary hike order, furnished by the second party, clearly indicates that the same relates to a note of the Administrator of the first party Nos. 1 & 2 regarding salary hike of the security guards deployed through Bhubaneswar Security Force (first party No. 5). The materials as discussed above, are clearly suggestive of the fact that though the second party was engaged to work under the first party Nos. 1 and 2, but he was being paid from time to time by the Outsourcing Agencies i.e. first party Nos. 4, 5 and 6 and therefore, by no stretch of imagination he can be held to be an employee of the first party Nos. 1 & 2 and placing reliance only on the xerox copy of the experience certificate (Ext. 2) it would be unsafe to conclude that the second party was an employee of Koustuv Group of Institutions (first party Nos. 1 and 2). A reference in this context may be made to the decision of the Hon'ble Apex Court in the case of Bengal Nagpur Cotton Mills, Rajnandgaon Vs. Bharat Lal and another, reported in 2011(128) FLR 560, wherein it has been held that two of the well-recognized tests to find out whether a labourer is a direct employee of the principal employer are :—

- (i) Whether the principal employer pays the salary instead of the contractor and ;
- (ii) Whether the principal employer controls and supervises the work of the employee.

Further, it has been held by the Hon'ble Apex Court in the Case of Silver Jubilee Tailoring House Vs. Chief Inspector of Shops and Establishments [(1973) 2 LLJ 495], that during the last three decades the emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor but it is wrong to say that in every case, it is decisive.

10. Keeping in view the settled principles of law as enunciated by the Hon'ble Apex Court (*supra*) coupled with the facts involved in the instant dispute, the Tribunal is of the clear view that the second party being an outsourced employee, there existed absolutely no employer employee relationship between first party Nos. 1 and 2 and the second party and that for all purposes the first party Nos. 4, 5 and 6 were his employers and on account of their deployment to execute the works of the managements, the first party Nos. 1 and 2 can be held to be the Principal Employer within the meaning assigned under the Contract Labour (Regulation and Abolition) Act and not the employers, as claimed by the second party.

The issue is answered accordingly.

11. *Issue No. (iii)*—Now it is to be seen as to whether the termination of service of the second party workman w.e.f. the 1st May 2017 is legal and justified. Claiming the action to be illegal and unjustified, it is contended on behalf of the second party that enough evidence having been adduced to show that despite rendering continuous service the second party was thrown out of employment in gross violation of the provisions of Section 25-F of the Act, the action of the managements can in no way be held to be legal or justified. *Per contra*, it is contended combinedly on behalf of the first party Nos. 4 and 6 that though they had engaged the second party to work under the first party No. 2, but on their contracts being terminated the second party was paid all his dues. Argument is also advanced that knowing fully well that he has nothing to get from the Agencies the second party has foisted this false claim only to harass the first party Nos. 4 and 6.

Keeping in view the submission laid on the issue, first it is to be determined as to how far the second party is able to establish that he has been terminated from service in gross violation of

the provisions of the I.D. Act. It is pertinent to note that in order to claim protection of the provisions of Section 25-F of the I.D. Act; the burden is on the disputant- workman to establish that he had rendered continuous service for more than 240 days preceding the date of his termination to get the relief(s). Though Section 25-F of the I.D. Act is plainly intended to give relief to retrenched workmen, yet the qualification for relief under Section 25-F is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in Section 25- B of the I.D. Act. In the present case, the provision which is of relevance is Section 25-B(2)(a)(ii) which provides that a workman who is not in continuous service for a period of one year shall be deemed to be in continuous service for a period of one year if the workman during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. In this connection, a reference may be made to the case of R.M. Yellatti v. The Asst. Executive Engineer (JT 2005 (9) SC 340), wherein their Lordships of the Hon'ble Apex Court have held as follows :—

“Analyzing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the afore- stated judgments, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. xx xxxx.”

8. In the case in hand, though it is the consistent stand of the second party that he has rendered continuous service for a substantial period, yet he is required to establish the fact of his continuous employment at least for a period of more than 240 days preceding the date of his alleged refusal of employment so as to construe the same as termination of his service and to examine the compliance part of the provisions of Section 25-F of the I.D. Act. “Continuous Service” being a condition precedent to set into motion the provisions of Section 25-F of the I.D. Act, unless the same is proved, the termination in question cannot be looked into.

To substantiate his case, the second party has examined himself as WW1 and stated that initially he was under the employment of first party No. 2 from the year 2000; under the first party No. 5 from 2005 to the 31st October 2015; under the first party No. 4 from the 1st November 2015 to the 10th March 2017 and under first party No. 6 from the 11th March 2017 to the 30th April 2017. So on his own saying, he had last served under the 1st party No. 4 and 1st party No. 6 from the 1st November 2015 to the 30th April 2017, but curiously enough not a single scrap of paper is either produced in the Tribunal or called for from the possession of the 1st party No. 4 & 6 to justify that during the period of his employment under the said managements, he had rendered continuous service for a period of 240 days preceding the date of his alleged termination, although the 1st party Nos. 1 & 2 have produced the copy of appointment order of the 2nd party (Ext. A) issued by management No. 4 and duly acknowledged by the 2nd party vide Ext. A/1 and the correspondence made by the management Nos. 1 & 2 to 1st party No. 6 (Ext. F) intimating cancellation of its contract. Rather, it is the specific evidence adduced through the witness of management No. 4 that pursuant to the contract between the management No. 4 and the management No. 1 the 2nd party was engaged through the agency to work in the premises of management No. 1 from the 1st November 2015 to the 10th March 2017 and was paid all his outstanding dues pertaining to his

employment during the period by the 1st party No. 4, accordingly the 2nd party furnished a letter (Ext. L) to the effect that he has no outstanding dues against the management No. 4 and so also a hand receipt (Ext. M) acknowledging some amount from the management No. 4. Substantiating its stand, the management No. 4 has also furnished two challans vide Ext. N showing remittance of some amount to the 2nd party through bank. Looking to the claim of the 2nd party and the stand of the management No. 6 in its written statement, there seems no dispute over the fact that the last phase employment of the 2nd party was under the management No. 6 for the period from the 11th March 2017 to the 30th April 2017 i.e., a period ranging only one and half months or little more. It further transpires from Exts. G, H, J and K that pursuant to the contracts entered into by 1st party management No.1 & 2 with the agencies it has requisitioned deployment of security personnel and consequently has also paid the bills raised by the agencies.

9. On a cumulative assessment of the evidence, as discussed above, it becomes crystal clear that the 2nd party on being sponsored by management Nos. 4 & 6 was engaged to work under 1st party management Nos. 1 & 2, but the 2nd party has failed to substantiate the fact of his continuous employment under the said managements so as to sustain his claim that he was terminated from service without due compliance of the provisions of Section 25-F of the Act. In the background as above, when the 2nd party is found to have failed in his attempt to prove the fact of his continuous service, which is a legal requirement as per the settled principles of law (*Supra*), this Tribunal has no other option than to hold that the termination of service of the 2nd party is in any way contravenes the mandatory requirement of law.

10. In view of the discussions made in preceding paragraphs, the termination of service of the 2nd party workman with effect from the 1st May 2017 can neither be held illegal nor unjustified.

11. *Issue No. (iv)*—The finding on Issue No. (iii) leads this Tribunal to conclude that the 2nd party is not entitled to any relief in the present proceeding.

Dictated and corrected by me.

BENUDHAR PATRA
19-04-2025
Presiding Officer
Industrial Tribunal, Bhubaneswar

BENUDHAR PATRA
19-04-2025
Presiding Officer
Industrial Tribunal, Bhubaneswar

[No. 4955—LESI-IR-ID-0027/2025-LESI.]

By order of the Governor

MADHUMITA NAYAK

Additional Secretary to Government